

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

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In re:

**Vicky R. Baxley,**

Bankruptcy Case No.: 07-81137

Soc. Sec. No. xxx-xx-2607

Mailing Address: 441 Deer Trail, , Raeford, NC  
28376-

Debtor.

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**Vicky R. Baxley,**

Plaintiff, A.P. No.:

**Cadles of Grassy Meadows II, LLC,**

Defendant.

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**VERIFIED COMPLAINT TO VALUE COLLATERAL**

The Plaintiff, above-named, respectfully alleges as follows:

1. That this matter is a core proceeding pursuant to 28 U.S.C. § 157, and that the court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157 and 1334.
2. This Complaint was filed, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1335(a)(5) and 1327 (c), and in accordance with Bankruptcy Rule 7001, to value their residence for the purpose of determining the secured status of the mortgage claim held by Cadles of Grassy Meadows II, LLC.
3. The Plaintiff is filed this bankruptcy case on August 9, 2007, seeking protection under Chapter 13 of Title 11 of the United States Code.
4. The Defendant Cadles of Grassy Meadows II, LLC is a corporation and/or a partnership with an office and principal place of business located at 100 North Center Street, , Newton Falls, OH 44444-. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 506, 1322(b)(2), 1335(a)(5) and 1327 (c).
5. The Plaintiff owns real property located at 441 Deer Trail Raeford NC 28376. The legal description of the property is as follows:

ALL THAT PARCEL OF LAND IN HOKE COUNTY, STATE OF NORTH CAROLINA,  
AS MORE FULLY DESCRIBED IN DEED BOOK 335, PAGE 12, ID#8485 00 01 063,  
BEING KNOWN AND DESIGNATED AS LOT NO 30 AS SHOWN ON MAP ENTITLED

"DEERFIELD" DATED AUGUST 5 1985 PREPARED BY BRACKEN AND ASSOCIATES RECORDED IN MAP BOOK 8 PAGE 47 HOKE COUNTY REGISTRY EXCEPTING AND RESERVING UNTO SAID GRANTORS ITS SUCCESSORS AND ASSIGNS FULL AND FREE RIGHT AND LIBERTY AT TIME HEREAFTER IN COMMON WITH ALL OTHER PERSONS WHO MAY HEREAFTER HAVE THE LIKE RIGHT TO USE THOSE ROAD, LEADING FROM NCSR1211 AND DESIGNATED "LOST LAKE DRIVE" AND "DEERTRAIL" ON REFERRED MAP AT ALL TIMES AND FOR ALL PURPOSES CONNECTED WITH THE USE AND OCCUPATION OF THE GRANTORS LAND ADJOINING THE SAME

BY FEE SIMPLE DEED FROM BETTY JO LEACH, WIDOW AS SET FORTH IN BOOK 335, PAGE 12 DATED 04/26/1995 AND RECORDED 05/04/1995, HOKE COUNTY RECORD, STATE OF NORTH CAROLINA.

6. Countrywide Home Loans, Inc. holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$40,672.25. This Deed of Trust was recorded on April 20, 1999, in Book 417 at Page 422, Hoke County Registry of Deeds.
7. Cadles of Grassy Meadows II, LLC holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$16,549.02. This Deed of Trust originally given to and held by GMAC Mortgage Corporation dba Ditech.Com. This Deed of Trust was recorded on August 5, 2005, in Book 00681 at Page 836, Hoke County Registry of Deeds
8. This Deed of Trust was assigned to Cadles of Grassy Meadows II, LLC on December 8, 2008 and recorded in the Hoke County Registry Book 834, Page 554-555.
9. The fair market value of the said property at the time of filing was not greater than \$31,028.00.
10. Pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1335(a)(5) and 1327 (c) of the Bankruptcy Code and In re: Kidd, 161 B.R. 769 (Bankr. E.D.N.C. 1993), the loan with Cadles of Grassy Meadows II, LLC, secured by a second Deed of Trust against the Plaintiff's said property, is an unsecured claim. In turn, pursuant to 11 U.S.C. § 506(d), the lien securing said loan is void.
11. The deed of Trust takes an additional security interest in, among other personal property, rents, royalties and insurance proceeds premiums.
12. Pursuant to *In re Bradsher*, 2010 WL 545967 (Bankr. M.D.N.C. February 16, 2010), such additional collateral renders 11 USC § 1322(b)(2) inapplicable.

**WHEREFORE**, the Plaintiff prays the Court find that said claim held by Cadles of Grassy Meadows II, LLC, which is secured by a second Deed of Trust upon said property, to be wholly

unsecured, and that said claim should therefore be classified an unsecured claim for the purpose of this Chapter 13 case. The Plaintiff further prays that the Court order Cadles of Grassy Meadows II, LLC to cancel the said Deed of Trust forthwith upon the completion of the Plaintiff's Chapter 13 plan and the granting of the Plaintiff's discharge, and that the Court grant such other and further relief as to the Court seems just and proper.

Dated: May 10, 2010

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

/s Edward Boltz

Edward Boltz

Attorney for the Plaintiff

North Carolina State Bar No.: 23003

6616-203 Six Forks Road

Raleigh, N.C. 27615

(919) 847-9750

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**Vicky R. Baxley,**

Plaintiff, A.P. No.: \_\_\_\_\_

**Cadles of Grassy Meadows II, LLC,**

Defendant.

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**VERIFICATION OF COMPLAINT TO VALUE COLLATERAL**

I, Vicky R. Baxley, the Plaintiff in the above captioned case, hereby state, under penalty of perjury, that, to the best of my knowledge, that:

1. Countrwide Home Loans, Inc. holds a first Deed of Trust on such property with an payoff balance, as of the date this case was filed in the amount of approximately \$40,672.25. This Deed of Trust was recorded on April 20, 1999, in Book 417 at Page 422, Hoke County Registry of Deeds.
2. Cadles of Grassy Meadows II, LLC holds a second Deed of Trust on such property with a payoff balance, as of the date this case was filed in the amount of approximately \$16,549.02. This Deed of Trust originally given to and held by GMAC Mortgage Corporation dba Ditech.com. This Deed of Trust was recorded on August 5, 2005, in Book 00681 at Page 836, Hoke County Registry of Deeds.
3. The fair market value of the said property is not greater than \$31,028.00.

Dated: 5/03/2010

/s/Vicky Baxley

Vicky R. Baxley

**Notarization:**

Sworn and subscribed before me on 5/03/2010

Affix Seal or  
Stamp

/s/ David D. Hayes

David d. Hayes

Signature of Notary Public

Commission expires: 5/03/2010